Certain (10)

CONSIDERATIONS

In order to a more *speedy*, *cheap*, and *equall* distribution of Justice throughout the

NATION.

Most humbly presented to the High COURT of Parliament of the most hopeful Common-wealth of

ENGLAND.

By *Henry Robinson*.

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CONSIDERATIONS

NATION

ENGLAND

1738:15

To the High Court of Parliament of the most hopefull Commonwealth of *England*.

THE *passing of those long expected* Resolves *of this High Court for the* Englishing *both of our Lawes and Proceedings in all Courts of Justice; for abrogating the so call'd,* Court-hand, *which to most People did nothing differ from exorcisticall Characters, save that the former was truly mischievous to them, the latter for the most part but imaginary; For nullifying* superfluous *Offices, & retrenching* unnecessary *Fees; for the* expediting *of Causes, and pursuing certaine directions concerning* Juries, *hath emboldned me to present unto your Wisdom these few considerations hereunto annexed: for which, and what else I have transgressed in the like kind, I shall only vse this short Apologie; That, as I have to some been known to cast in my little mite, concerning many, if not most matters of publick debate, not so much out of confidence of my own strength, as sincerity of heart, and for provoking others of better abilities to improve them: so in this, towards the* Reformation *of our Lawes and Law-proceedings, which if not speedily brought about, may like enough, take root again, and settle firmer upon their old corrupt foundation, which must necessarily contract such farther rottenness & festering, as will at first infect, & afterwards, too soon, make void and annihilate all those Glorious* Liberties *and* Discoveries, *which*

wee have attained to with the charge of ſo much Blood and Treaſure, for redeeming them out of the jaws of Superſtition & Tyranny: may You then but be prevailed upon ſpeedily to ſecure what We have ſo dearly paid for: We muſt infallibly back again into our wonted bondage (which on ſuch as have had their eyes opened, would fall more grievous) unleſſe the whole Myſterie of the Judiciary faculty, and of all thoſe that relate unto it, be fully diſcovered, and ſet at rights.

I beſeech You conſider, They are an Active generation, ſo that if well regulated, the Nation may be as happy in them, as otherwiſe We muſt be again more miſerable.

May You then pleaſe to let it be enquired into; Whether the Multiplicity of Courts of Juſtice do not cauſe a more miſchievous confuſion in the World, than the Babilonian of Languages? That of Babel doth only eſtrang Nations to one another; but this variety of Courts of Juſtice in any Land or Nation, perplexes and confounds the People thereof among themſelves; The proceedings in them are ſo various, as that it is above any one mans ability and ſtrength to be experienced in more than one of them: So many ſeverall Courts, ſo many ſeverall hard Myſteries or Trades, above one whereof, no man though of the ableſt parts, can be well skill'd in or practiced: And from henc proceeds it in part, that Lawſuits becom both more laſting and chargeable: Particularly, to what purpoſe ſerved the Kings Prerogative Court of Exchequer, one of the moſt eminent badges of Conqueſt and Tyranny? Surely all Courts ſhould be the Common-wealths in generall, and every mans in particular: Juſtice ſhould not know any diſtinction of perſons, but be ſtill one and the ſame in all Courts alike, whether as touching the letter of the Law, or Equity: But forſooth, they were all called the Kings Courts alike; And indeed we had little but what was our Kings; Wee had nothing of our own; ſo gracious were they, and ſo miſe-

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rable have we been: But our Kings bear sway enough in all other Courts at Westminster, they needed not have had a peculiar Court of their own to doe Injustice.

Besides; Our Lawes of themselves are so numerous and intricate, as that it is not possible to know them all, much lesse keep them in memory, or avoyd the being entangled by them, and injured by Law: Nay, I am afraid it may be found, that never such Jugling, if not very cheating, was consistent with the rules of any Faculty, as of this I speak, and is at present practiced in England: How els comes it to passe that a man may dwell in Westminster-Hall, and yet be sued untoan Outlury before he know of it? How comes it els to pass that an Executor may be forced to pay as long as he hath Assetts, and yet afterwards be forced to pay the same sums over again, because he could not keep himself from being forced to pay them away before? In brief, how comes it els to pass that a Debtor may keep his Creditor in prison untill he be compelled to give him a discharg, or yeeld to whatsoever he desires? I only wish that some honest publique spirited Lawyer who throughly understands the various Meanders, Quirks and subtilties of this over-powring Faculty, would anatomize, and lay open unto the Nation, how easily it is for the very best Lawes wee have to be evaded and frustrated, and the whole formality and proceedings to be avoyded and deluded by legall fallacies and tricks.

I am confident our whole body of Lawes, even in their originall constitution, will be found to be so purely the Offspring of Oppression, and Oppressors Creatures, and in themselves so weak and fruitlesse, as to the estating and continuing of a Nation in Peace, plenty, and Contentation, that the Law, or rather custome of the Turks, is to be preferred before it, where he that will give most, shall be sure to have the right determined on his side; only, because the wronged party is quickly out of

pain,

pain, and in a short time knowes what he has to trust to:

But for our own Lawes, which some notwithstanding prefer before all the world's, because they never well understood their own, much less those of other Countries, though corrupt enough in most; They are such a forraginous peece of Intricacies, such a vanity to becom a Rule unto so famous a Nation; such a Nose of wax, *lyable to be formed any way for the vexation of a People; as that if the very memory thereof, and the Formalities of their proceedings were quite extinct, never to present themselves again unto our Imaginations, and thereby the Nation forced to seek out both new Lawes and Forms; wee could not happen upon so bad again; Nay, wee were likelier to light upon far better than any Nation enjoyes at present; because well neer all Nations, though some more, some less, lye under oppression, and cannot procure to themselves, such as they desire, nor the* equall *administration of those they have.*

I did not intend to have been so tedious, & therefore humbly crave leave to insert a word concerning our Statutes against Maintenance & Champarty, *whereby the purchasing of Titles from persons not in possession, have been so speciously prohibited, as the only way to prevent disquieting, vexing, oppressing, and finall disinheriting of the true Proprietors: Surely We may find the quite contrary effect to have ensued hereupon, and poor People by force of these Statutes been necessitated to lose their titles, because they might not gratifie such as would have been willing to furnish them with moneys to prosecute and recover their Rights.*

What good effect have we seen at any time to poor People suing in forma pauperis? *If the highest over can* protract, & sway *Causes as they please, against others of moderate, though inferiour estates and friends unto themselves; certainly no crums of relief, much less of dispatch, will be suffered to be cast away to* Paupers.

May

May we but have speedy justice at home in our own Counties, and large charges to such as shall be found unduly sued; we need not prohibit poor People, to sell or give away one halfe of their right, for recovering of the other: Men will look before they leap, and consider well before they advenure upon bad titles, or disturb any man in possession, unless they see sufficient evidence to bear them out therein: It would be a hundred fold better for the Nation, even under these Laws we live at present, so far forth to repeal those Statutes concerning Mayntenance & Champarty, and render all men in possession lyable to have their Titles questioned, than to leave poor People remediles; In regard such poor People thus oppressed are above a hundred for one, who by such repeal would be in danger to be unduly molested.

But if the Reformation of the Lawes seem great and difficult, and by so much longer before it can be brought about: We may notwithstanding be happy in due time, If it be but seriously begun to be set upon at present; and in the Interim, with less disadvantage patiently expect the compleating thereof, If the County Register *of Conveyances mentioned in the same dayes* Resolves, *together with another Register of Bonds and Bills of debt, with their Irrevocable assignableness to all intents and purposes, (whereof I have a modell not exceeding one sheet of paper, nor requiring many hours debate, ready to be produced whensoever this High Court shall be pleased to refer it unto a Committee, to be proceeded on) were forth-with established: Both the said Registers carrying in themselves a capacity to abbreviat & prevent the greatest part of all Lawsuits and Cavils; and the latter not only to multiply the stock of the Nation, which at present is at so low an ebb, would exceedingly facilitate and enlarg Trade and Navigation.*

But lest I should be accounted unworthy, or unadvised to intermeddle in this great affair, wch besides it's being obnoxious

to

to other objections, might perhaps at firſt appearance be thought very dammageable unto the conſcientious learned Judges and Counſellors: In caſe this High Court in their deep Wiſdom ſhall think of a Reformation, whether according to this little modell in all humility propounded, or any other, which, I wiſh might be of a hundred fold more advantage unto this Nation; It is in Your power to conſtitute and aſſign ſuch worthy Judges and Counſellors in every County throughout the Land, with the very ſame ſtipends, or greater than they enjoy at preſent; Præmio & pœna floret Reſpublica: *It were better to be profuſe in rewarding perſons of deſert in what kind ſoever, than to be ſhort therein.*

And ſince the pittance is ſo ſmal, which can any wayes befall me in this Common-wealth's proſperity, I hope I ſhall be thought free from all ſelf-Intereſts, and only to have engaged my ſelfe in matters of this high Nature out of a Publique ſpiritedneſs, and to make the beſt Improvement of my only talent how ſmall ſoever, to the beſt advantage of this Nation wherein Providence hath caſt me.

There now remayns only this humble Motion, That the High Court of Parliament if in their deep Wiſdoms They ſee cauſ, vouchſafe to refer the conſideration of this little Paper unto the Committee mentioned in the ſaid Reſolves, for whoſe happy proceedings thereupon, or otherwiſe, in purſuance of the ſaid Reſolves,

This Propounder and the whole Nation will be bound to pray, *&c.*

Certain

Certaine conſiderations, in order to a more ſpeedy, cheap, and equall diſtribution of Juſtice throughout the Nation.

THERE is ſeldome any Writ ſerved upon a man, but the party that ſerves it, makes one or more lyes, or falſe pretences, to get an opportunity to ſerve it upon him, who otherwiſe would very often avoid being ſerved therewith, and ſo obſtruct the proceedings intended againſt him: Whereas, if the Writ, or ſuch like ſummons, or Intimation be left at the houſe of the parties habitation, ſuch occaſion of ſinning would not only be taken away, but the obſtructions in the tryall of ſuits prevented.

It ſeemes to be not only againſt the law of God and Nature, but even of common reaſon to ask a priſoner at the Barr whether he be guilty or not guilty.

1. In reſpect that if he anſwer guilty, he condemns, or rather murthers himſelfe, as much, if he were truly guilty, as if he were innocent.

2. If he be guilty, and anſwers not guilty, he tels a lye.

3. Though he be guilty, and anſwer not guilty; and though he be innocent, and anſwer not guilty, yet they endeavour by

all the meanes they can to find him guilty: ſo that it ſerves to no purpoſe, but either to tempt ſuch as are guilty to tell a lye to ſave their lives, or elſe to be acceſſary to their owne death by their owne confeſſion, which unleſſe they will doe, they proceed againſt them to make them guilty by Witneſſes or other Evidence; In which reſpect whether were it not more Chriſtian like to proceed againſt Offenders by way of Witneſſes, or other Evidence, if there be any ſufficient, without asking the Priſoner whether he be guilty, or not guilty.

Seven Objections againſt the tryall of Cauſes by a Jury of 12. *men.*

1. *THere is not a competent number of underſtanding and fit men to be had in the leſſer Diviſions of a County, for tryall of all Cauſes upon all occaſions.*

2. *People are generally unwilling to be called upon for Jury-men, whereby they neglect their owne affairs.*

3. *Though they doe come to avoid the penalty, they ſeldome take the courſe to be rightly qualified and fitted, to judge of the matter in controverſie.*

4. *Moſt commonly one or two active & nimble-pated men over-ſway all the reſt, of the Jury, and too often for the worſt.*

5. *Though never ſo many of them diſſent in judgement from the reſt, they muſt notwithſtandinding all concurr in the Verdict, or be wearyed into it.*

6. *If they give corrupt or erroneous Verdict, there cannot juſtly be any penalty inflicted on them, becauſe they may pretend they did at firſt declare themſelves unfit for ſuch employment: that they undertooke it not willingly, but were compelled thereunto; and when they ſaw there was no avoiding it, they endeavoured to proceed therein according to the uprightneſſe*

rightneſs of their own conſciences, if they be thought to have done amiſſe, it was but what they could not remedy, and are heartily ſorry for it.

7. The keeping the Jury without fire, light, bread or drinke, as the Law requires, may poſſibly make the major part of them, if not all, agree upon a verdict contrary to their conſciences to be freed from any of theſe exigencies, at leaſt, ſome of them to ſtrike up with the reſt in a joynt verdict, ſince it is well neer impoſſible for 12. men, all circumſtances conſidered, much more in a doubtfull caſe, to be of one opinion; and though the caſe were never ſo cleare, yet one peremptory man of a ſtrong conſtitution, whether his judgement be right or wrong, may ſterve all the reſt unleſſe they will give verdict as he will have them.

Wherefore in regard it is thus troubleſom and chargeable for all people throughout the Land to come up to *Weſtminſt.* for determining of Law-ſuits, & becauſe a Jury of 12. underſtanding and upright men are not readily to be had at all times, in every Hundred, or ſuch like Diviſion, for the ſpeedy deciding of ſuch Differences as may ariſe: It is humbly propounded, that the Commons aſſembled in Parliament, out of the great deſire they have, as much as in them lyes, to make this Nation happy, by endeavouring, ſo farr as is poſſible, that the people of all ranks may live in love and friendſhip one towards another; for all ſuch differences as ſhall happen to ariſe, they may either be compoſed in a friendly Chriſtian manner, with mutuall approbation of the parties, or elſe ſpeedily and frugally determined, according to evidence produced, in manner following. [*viz.*]

The Perticulars of what is humbly propounded to be eſtabliſhed by Act of Parliament.

THat in every City, Corporation, and ſuch other diviſions of each County throughout the Land, as the *Parliament* ſhall appoint, there ſhall reſide one or more perſons, with the title of Judg or Judges of ſuch City, Corporation, or Diviſion, to whom in conſideration of a yearly ſalary to be allowed them, it ſhall appertain to hear, & determin all matters of Controverſie, whether Civil or Criminal, which ſhal be brought before them, con-

cerning the publique, or any person within their City, Corporation, or Division, as followeth, [*viz.*]

Whatsoever Person hath any difference with another, shall only be at liberty to sue such person before the Judg, or Judges of such City, Corporation, or Division where the person to be sued is found present, when the suite is first commenced, or doth usually abide:

And if the person to be sued, hath severall habitations, then, in such City, Corporation, or Division as hee was known, then, or lately to reside in, before the suit was commenced; or in any other place where hee is notified in person, at the first Commencement thereof as aforesaid: to which end,

Such person as hath a Controversie shall repair unto the respective Judg, or Judges of the place, or to his or their Clerk, and acquaint him or them, by whom, and in what manner the publick or he himselfe is injured; Whereupon the said Judg is to require both parties to appear before him, if they be willing, and use all possible meanes by himselfe, the Minister of the Parish, or such discreet men as he thinks good, for composing of the difference, if it be meerely Civil, by Joynt-consent before it be farther proceeded in.

In case the parties cannot be agreed, if the matter in Controversie exceed not 50. s. and the parties have their evidences in readinesse, then may the Judge determine it at the very first hearing, and making a briefe record of the whole proceeding, *Ad perpetuam rei memoriam* grant sudden execution.

But if it passe the value of 50. s. the party grieved may take the priviledge of putting in his bill, or Demaund fairly written in Court, unto the Judge or Judges, or his, or their Clerk, which ever after is to remain by him, or them, as in Court upon Record; And the Plaintiffe having first caused an Entry of the said Bill, to be made upon the said Bill, together with the date of the said Entry, by the Judge, or Clerk, he is than forthwith to take out a Ticket of Notification, under the said Judge or Clerk's hand, and cause it to be sent by an Officer for that purpose, unto the person so sued, whereby he may have notice of such a Bill put in against him, and have two or three dayes time, to put in his answer, according to

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the distance of the place, where he resides, and the Messenger returning is to make report unto the said Judg, or his Clerk, that he delivered such a Ticket unto the Party sued in person, or left it with some person of about the age of twenty, as might rationally be presumed by his, or her aspect, at the house of his usuall habitation, specifying the place where, and time when, the particulars whereof, the said Judge, or Clerk, is likewise to make Entry of, upon the said Bill with the Messengers name.

And the Judge, or his Clerk is obliged to give a Copy of any Bill, Answer, or whatsoever else is entered upon Record in any suite in the said Court under his hand, unto either of the parties, or to any other desiring them, for such fees as are hereafter specified.

If the Party so sued and notified appear not, or if appearing puts not in his Answer, if the Plaintiffe desire it, another notification is to be sent him, as before, to appear and heat judgment given within three dayes; and the said notification, and all others, to be entred as aforesaid.

Then if the party sued appeare not, upon this latter notification within the terme limited, Judgment for Principall Charges, and Dammages, is to be given according to the Plaintiffs demand, with expresse mention of the contumacy of the party sued, and reserving unto the said party sued, his right, what ever it be, to be made appeare in that Court, or any other, when and where the Lawes of the Land shall give him leave.

And if the Plaintiffe desires, execution is forth-with to be granted, both against person and goods, upon the Plaintiffes putting in sufficient security, unto the Court, to be accountable in case of undue Imprisonment, or for the whole value thereof, or so much as the person sued and condemned in through contumacy, shall within three moneths next ensuing make appeare to be unduely recovered, together with Dammages and Charges; And the said execution may be served by the person himselfe in whose favour it was graunted, or by whomsoever else he shall employ (provided that both one and other be persons of integrity) besides the Officers for that purpose,

poſe, who are to be aſſiſted if need be, by the Magiſtrates of the place, that no oppoſition be made, to impede or delay the Courſe of Juſtice.

But if the party ſued appears, and puts in his anſwer, he is likewiſe to cauſe the Judge or his Clerk to make Entry thereof upon the ſaid Anſwer, and that a notification thereof be ſent to the Plaintiffe, which with the report thereof is to be Entred as aforeſaid.

Then may the Plaintiff reply within the term preſcribed, and the Defendant rejoyn.

In caſe Witneſſes be to be examined, ſuch time is to be allowed, and no more, then is neceſſary for the effecting it, as alſo for producing Evidences from parts farther diſtant; And all Witneſſes may be examined, whether upon Intergatories, or otherwiſe, by the Judg or his Clerk, of the place where the ſaid Witneſſes reſide, to be tranſmitted unto the Court, where the cauſe depends.

Which being done, or ſuch term as the Judg had aſſigned for ſuch purpoſe, expired without effect, through negligence of the parties concerned therein, after a day, two or three, wherein the Judg is to peruſe the Proceſſe, and whole proceedings, it is in the liberty of either party to notifie the other, to appeare the ſecond or third day according to the diſtance of the place, and the Judges leyſure, at a convenient houre, for arguing the whole buſineſſe in contradictory, before the Judg; And if neither party deſire it, the Judg, if hee be not fully informed may notifie them, *Ex officio*, or either of them ſingly for the ſame purpoſe, to be fully ſatisfied in whatſoever he ſhall deſire; and for that end may likewiſe deliver his doubts or ſcruples in writing to either, or both parties, and require anſwer accordingly, to be afterwards inſerted with the reſt of the proceedings in Court to remain upon Record.

And if any thing Materiall be alleadged and proved, by this contradictory debate which did not before appear, the Judg is to Order it to be put in Writing, and Entred with the other proceedings, notifying the parties thereof.

And in caſe one party refuſe to appear before the Judg, for thus arguing of the buſineſſe, in contradictory, he is not afterwards

wards to be admitted to produce any new evidence or proof; but upon requeſt of either of the parties in Writing, which is to be notified to the other as aforeſaid, the Judg is to proceed, and give judgment both for Principall, Dammages, and Charges, according to what appears to be alleadged and proved, and ſudden execution to be granted, at that very Inſtant, againſt body and goods, unleſſe the party condemned being preſent, or any body in his name, ſufficiently authorized thereunto, appeal from ſuch Judgment of the Diviſion Court, unto the Judges of the Shire-Town, which it ſhall be lawful for him to do, within 8. dayes next following, and there to proſecute the ſame in manner hereafter ſpecified.

And if the party condemned appeal before execution be granted, then muſt he, in whoſe favour the Judgment was, deſiring execution, firſt put in ſufficient ſecurity to ſtand to ſuch farther judgment, as the Court, to which the appeal is made, ſhall think good to paſſe, to be entred with the reſt of the proceedings, otherwiſe not.

The Appeallant therefore is to Enter his appeal in writing, to be kept with the other proceedings, where the Judgment was given; and that Judg, or his Clerk is forth-with to give him a Copy thereof under his hand, as alſo of the whole proceedings, or of ſo much as is deſired, ſo ſoon as it can conveniently be made, which the Appeallant is to tranſmit unto the Court of the Shire-Town, where it is to be admitted upon the Appeallants putting in ſufficient ſecurity unto the Court of the Shire-Town, that he will effectually proſecute the ſaid Appeal within eight dayes following, and be lyable to ſuch Charges, penalty, and otherwiſe, as that Court ſhall condemn him in, in caſe hee be found to have appealed unduely.

And it ſhal be likewiſe lawful for both parties to appeal from one and the ſame Judgment in ſuch part thereof as they apprehend themſelves agrieved, and proſecute the ſame in ſuch manner as aforeſaid; and the Shire-Court in ſuch caſe obliged to obſerve the ſame Orders concerning Fines and Charges as aforeſaid.

This being done, and the appeal admitted, notification thereof is to be made unto the party, in whoſe favour the Judgment

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was graunted, in the Hundred-Court, who is to anſwer to this appeal in the Shire-Court; and the whole proceedings, and Proceſſe to be framed as aforeſaid, in the Hundred-Court.

And if nothing more Materiall be alleadged and proved, than what was before in the Hundred Court; If the Judg of the Shire Court ſhall ſee good to confirm the ſaid Judgment of the Hundred-Court, hee is likewiſe obliged to condemn the Appeallant in all manner of Charges, and one ſixth part more then the buſineſſe in controverſie amounted to, by way of penalty, to the uſe of him that had both Judgments in favour, and execution forthwith to be had accordingly.

But if no new matter being alleadged and proved, the Judg of the Shire Court ſhall ſee cauſe to reverſe the Judgment of the Hundred Court, in the whole or in part, the Defendant in the Shire-Court is not to be condemned in Charges diſburſed ſince the Appeal to the ſaid Court; but the Judg of the Hundred Court, for his unjuſt, or erroneous Judgment, is to be fined ſo much, as the Charges of both parties, in the Shire Court, amounted to, and ſo much more as the full Dammages of the Appeallant will any ways amount to, with ſpeedy execution as aboveſaid.

And in caſe new matter be alleadged, and proved, for which cauſe the Judgment happens to be altered in part, or in the whole, than the Defendant is not to be condemned in Charges, nor the Hundred Judge in any Fine, ſo far as the new matter alleadged, and proved, was cauſe thereof.

And if the Judg or Judges of the Shire Court ſhall paſs unjuſt or erroneous judgment, ſuch judgment ſhall notwithſtanding be valid, ultimate, and binding, in reſpect to the parties litigant, and have ſudden execution both againſt body and goods of the party condemned, without putting in ſecurity, as was before required.

And if either, or both parties find themſelves agrieved, it ſhall be lawful for them, or either of them to addres themſelves unto the *Parliament*, againſt ſuch Judg or Judges of the Shire Court, who hereby are made accomptable, and lyable to be condemned in all manner of Dammages, coſt and charges, ſuch party or parties complaining againſt them, ſhall have ſuffered through

their

their unjuſt erroneous Judgment, be put by their Office, and ſuffer ſuch other puniſhment, as the Juſtice and wiſdome of the *Parliament*, think good to inflict upon them.

But if any perſon ſhall be found to have without cauſe Appealed from the Shire Court, and unjuſtly to have accuſed the Judg, or Judges thereof in *Parliament*, then ſhall the ſaid Judg or Judges be abſolved.

And ſuch perſon be lyable to be condemned by the *Parliament* in the ſame penalties, which he required, by way of demand, to be inflicted on the ſaid Judg, or Judges, and ſudden execution to be granted, to the uſe and benefit of the ſaid Judg or Judges only, together with their full Charges to be rated by authority of *Parliament*, and all other Charges to be likewiſe rated by the reſpective Courts, where Judgment was given for payment of them.

The Judg, or Judges of the Diviſion or Shire Court are obliged hereby, if either of the parties deſire it, to draw out the motives in brief, which ſwayed them in giving ſuch judgment, to remaine upon Record, together with the Proceſſe; and ſo ſoone as any ſuit is fully ended, whether in the Hundred, or Shire Court, all papers and proceedings are to be made up by themſelves, and bound together with others orderly, according to the date of the Judgment, in as great a Volume as is well manageable, with an Alphabet at the end thereof, ſpecifying the names both of the Plaintiffs and Defendants.

And in caſe the Judg or Judges of the Hundred, or Shire Courts ſhould dye, whilſt any unjuſt or erroneous Judgment reſted depending upon appeale, then the reſpective Heirs, Executors, or adminiſtrators of the ſaid Judg or Judges, ſhall become lyable unto all Penalties & Fines which happen to be inflicted; by reaſon of ſuch unjuſt & erroneous judgment, whether by the Shire Court or Parliament; Provided ſuch Appeals were made to the Shire Court, within the eight dayes afore ſpecified, and unto the *Parliament* then ſitting if there were any, or elſe unto the next *Parliament* enſuing ſuch unjuſt and erroneous judg ment.

☞ And concerning all ſuits which ſhall be primarily Commenced, in the Shire Court, and brought thither by Ap-

peal; they are totally to be managed, in all other respects and circumstances, as was before prescribed, concerning such causes, as were commenced, prosecuted, and determined in the Hundred Courts.

And it is expresly hereby Enacted, that no Judg, or Judges Clerk shall take any other, then the fees hereby allowed, nor other moneyes, or any manner of thing money-worth, from any person whomsoever: And that no person shall give, or so much as offer to any Judg or Clerk, greater fees then are hereby allowed, nor money, nor any thing money-worth, upon penalty both to taker and giver, of being condemned in twenty times the value unto the discoverer, by the next Hundred Court, or any other within the said Shire, where the fact was done, and before which the party shall be accused, besides the forfeiture of Place, or Office unto the Judg and Clerk so offending; and the Giver or Taker not only to escape unpunished, for the first time, upon discovery of the other, but also to enjoy the benefit as Discoverer.

And the said Judg, or Judges, and their Clerk shall take no other fees, than these that follow, [*viz.*]

Whereby in one word is meant, no other or larger fees than barely after the rate of so much a sheet, as other men will be contented with, to copy out in a fair hand-writing, such Bills and Answers, as Plaintiff, Defendant, or any other person shall desire copies of; the said Judges or their Clerks being to receive such Salaries out of the Publique Treasury, as may prove a large and full maintenance for themselves and Families.

FURTHER

FURTHER CONSIDERATIONS.

CONsider who shall choose the Judges; whether the Representative, and the Councell of State, in the Intervalls, or the People of each Division.

May it not be best that the People choose them not, lest they make choise of such as may be swayed with alliance, of one kind or other, and whether a Judg that were the greatest stranger to them, might not prove best, and such Judges moveable from one place to another, every third or fifth yeare, to prevent all engagements of alliance or acquaintance.

If the Representative or Councell of State in the Intervals choose: whether is it best to have them fixed, *quam diu se bene gesserint*; or moveable of course every 3. or 5. yeare, from one Division or Shire Court unto another, to prevent the gaining of alliance to oversway them: But if they should be quite cashiered at three or 5. years end, or upon any other cause than misbehaviour of some kind or other, they would then be disappointed of a livelihood, and though they deserved never so well, be more unhappy than men of any other Calling.

It being requisite that the Judges in their respective Residencies with the under Officers, should attend the duties on every weeke day, and all day long at seasonable hours; It is necessary for them to have a competent and full maintenance allowed them, to prevent all manner of Distractions and Temptations.

Querie. Whether the Shire Court if found erroneous, ought not to be repealed? If no, it may induce the party upon a weighty tryall to corrupt the Judg the rather: And yet if the Judg impeach him for giving bribes, he is likewise fineable more than the Judgment imported: and the sooner a definitive Judgment may be had, upon good grounds, the better.

FINIS.